



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3599

SEP 27 2019

REPLY TO THE ATTENTION OF

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Dan Hart, Owner/Operator  
H&H Diesel, Inc.  
7327 E. 600 North  
Rochester, Indiana 46975

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Hart:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to H&H Diesel, Inc. (H&H) for violating Sections 203(a)(3)(A) and (B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(3)(A) and (B). As summarized in the attached FOV, EPA has determined that H&H has removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and has sold, offered to sell, and installed parts or components that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Sarah Clark. You may call her at (312) 886-9733 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



for Michael D. Harris  
Acting Director  
Enforcement and Compliance Assurance Division

Enclosure: SBREFA fact sheet

cc: Phil Perry, Chief  
Air Compliance Branch  
Indiana Department of Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

H&H Diesel, Inc  
Rochester, Indiana

Proceedings Pursuant to  
The Clean Air Act,  
42 U.S.C. §§ 7401-7671q

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**FINDING OF VIOLATION**

**EPA-5-19-MOB-07**

**FINDING OF VIOLATION**

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to H&H Diesel, LLC (H&H or "you") for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(3)(A) and (B).

**Statutory and Regulatory Background**

1. Title II of the CAA was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that "the increasing use of motor vehicles. . . has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress's purpose in enacting the CAA included "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution." CAA § 101(b)(1)-(2), 42 U.S.C. § 7401(b)(1)-(2).
2. Section 216(2) of the CAA defines "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway." *See also* 40 C.F.R. § 85.1703 (further defining "motor vehicle"). These definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use (e.g., claim that a vehicle is used solely for competition).
3. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), and other pollutants applicable to motor vehicles and motor vehicle engines, including diesel engine ("diesel engine") vehicles, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86. Diesel engine emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology." CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
4. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling a new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered

by a certificate of conformity (COC). EPA issues COCs to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C.

§ 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The COC will include, among other things, a description of the diesel engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. Diesel engine manufacturers employ many devices and elements of design to meet emission standards. "Element of design" means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine." *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.
6. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, diesel engine manufacturers may utilize control devices or elements of design such as Exhaust Gas Recirculation (EGR), Clean Gas Induction (CGI), Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), and/or Selective Catalytic Reduction (SCR) systems.
7. Diesel engine vehicle manufacturers may also employ engine fueling strategies, such as retarded fuel injection timing, as a primary element of design to limit emissions of NO<sub>x</sub>. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) ("[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub>...").
8. Modern diesel engine vehicles, are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the EGR, DOC, DPF, and SCR systems and the engine fueling strategy.
9. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), the EPA promulgated regulations for motor vehicles manufactured after 2007 that require diesel engine motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.
10. Section 203(a)(3)(A) of the CAA prohibits "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser."

11. Section 203(a)(3)(B) of the CAA prohibits “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

### **Background**

12. H&H is a full-service truck repair shop and diesel engine motor vehicle aftermarket parts installer with a location at 7327 E. 600 North, Rochester, Indiana 46975.
13. H&H is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. On February 26, 2019, EPA conducted a CAA inspection of H&H’s Rochester, Indiana location (CAA Inspection). EPA observed a sign outside the main entrance that read “H&H Diesel, Truck & Trailer Repair, Authorized Dealer for: FASS Diesel Fuel Systems, Full Tilt Performance, and DSI Performance” The latter refers to a company called “Diesel Spec, Inc.” or “DSI.”
15. During the CAA Inspection, H&H showed EPA a hand-held device which the owner, Mr. Hart, referred to as a “diagnostic tool.” The device had a “Diesel Spec Inc.” label. EPA also observed Full Tilt Performance manifolds in H&H’s stockroom.
16. During the CAA Inspection Mr. Hart explained that H&H diagnoses and repairs emission controls and has never sold or performed any deletes or tunes that disable any emission controls.
17. On March 7, 2019, EPA issued to H&H a request for information under Section 208 of the CAA, 42 U.S.C. § 7542, requesting information related to H&H’s purchase, sale, and/or installation of Diesel Spec, Inc. parts and components and/or services (products) between January 1, 2018 and March 7, 2019 as well as a copy of records related to H&H’s involvement with Diesel Spec, Inc. from January 1, 2016 to March 7, 2019.
18. On April 2, 2019, EPA received H&H’s response to EPA’s March 7, 2019 information request. The response included H&H invoices for the products H&H sold to customers and/or installed on customer motor vehicles, invoices for the products Diesel Spec, Inc. sold to H&H, and other records illustrating H&H’s correspondence with Diesel Spec, Inc. These records indicate that Diesel Spec, Inc. sold parts and components, consisting of “remote tunes” and “remote tuning,” to H&H; H&H sold and/or installed these tunes on customer motor vehicles equipped with Cummins, Paccar, Maxxforce, Caterpillar, and Detroit Diesel heavy-duty diesel engines. H&H’s response also indicates that Diesel Spec, Inc. offered to sell their products in the United States, including at the Mid-America Trucking Show.
19. On April 26, 2019, EPA issued to H&H a second request for information under Section 208 of the CAA, 42 U.S.C. § 7542, which requested additional details about Diesel Spec,

Inc. “remote tunes” and “remote tuning,” the work H&H performed to allow each Diesel Spec, Inc. tune to be effective, and copies of advertisements and instructions for Diesel Spec, Inc. products.

20. On July 10, 2019, EPA received H&H’s response to EPA’s April 26, 2019 information request. H&H provided a spreadsheet that, for each Diesel Spec, Inc. tune H&H purchased between July 21, 2016 and March 12, 2019, detailed whether the tune altered, disabled, and/or allowed the removal of the EGR, DPF, SCR, and/or catalyst, and indicated what physical modifications, if any H&H, provided to customers with that tune.
21. The information H&H submitted in response to the EPA’s information requests indicates that between July 21, 2016 and March 12, 2019, H&H tampered with at least 61 motor vehicles by removing or rendering inoperative the EGR, DPF, SCR, and/or catalyst, through unplugging the valves and installing block-off plates (for the EGR) or by disconnecting the system in each motor vehicle.
22. The information H&H submitted in response to the EPA’s information requests indicates that between January 1, 2018 and February 13, 2019, H&H sold at least 51 tunes manufactured by Diesel Spec, Inc. These products (“Defeat Tunes”) consist of software that renders inoperative the original programming of a diesel engine vehicle’s ECM. These Defeat Tunes may disable or allow for the removal of emission controls (i.e., EGR, DOC, DPF, and/or SCR system(s)) without illuminating a malfunction indicator lamp in the vehicle’s OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating or malfunctioning due to deactivation or removal of an emission control device.
23. The information H&H submitted in response to EPA’s Information Requests also indicates that, between January 1, 2018 and February 13, 2019, H&H sold, offered to sell, and/or installed several parts or components with the Defeat Tunes. These parts and components include exhaust manifolds and kits manufactured by Full Tilt Performance that disable, remove, bypass, defeat, or render inoperative emission controls, including the EGR, on diesel engine vehicles (“Delete Parts or Components”).
24. The parts and/or components sold, offered for sale, and/or installed by H&H are intended for “motor vehicles” as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2). Specifically, the parts and/or components are designed for use on makes and models of diesel-engine motor vehicles for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards. Further, H&H knew or should have known that these parts and/or components were being used by its customers to bypass, defeat, or render inoperative the emission controls on motor vehicles and/or motor vehicle engines certified under the CAA.
25. As a legal matter, there is no “off-road use only” or “competition only” exemption under the CAA for motor vehicles or motor vehicle engines. “Motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” CAA § 216(2); 42 U.S.C. § 7550(2); *See also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”). These definitions make no exemption for motor vehicles or

motor vehicle engines used for competition.<sup>1</sup> More generally, these definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

### Violations

26. H&H knowingly removed and/or rendered inoperative the EGR, DPF, SCR, catalyst, and/or OBD systems and tampered with the emissions-related elements of the ECM installed on at least 61 motor vehicles, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).
27. H&H sold, offered to sell, and/or installed numerous parts or components, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of the part or component was to bypass, defeat or render inoperative elements of design that control emissions, such as the EGR, DPF, SCR, catalyst, OBD systems and/or other elements of design on motor vehicles and motor vehicle engines, and H&H knew or should have known that such part or component was being offered for sale or installed for such use or put to such use, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

### Environmental Impact of Violations

28. These violations may result in excess emissions of PM, NO<sub>x</sub>, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO<sub>x</sub> exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

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<sup>1</sup> In contrast, the CAA exempts from the definition of "nonroad vehicle" and "nonroad engine" those vehicles and engines used solely for competition. CAA § 216(10)-(11); 42 U.S.C. § 7550(10)-(11). EPA has implemented regulations describing how to exempt from CAA requirements nonroad vehicles and engines used solely for competition. 40 C.F.R. § 1068.235. These regulations explicitly do not apply to motor vehicles and motor vehicle engines. 40 C.F.R. § 85.1701(a)(1).

Enforcement Authority

29. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to an injunction under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,735 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

9-27-19  
Date

  
for Michael D. Harris  
Acting Division Director  
Enforcement and Compliance Assurance Division



# U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

## Office of Small and Disadvantaged Business Utilization (OSDBU)

[www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu](http://www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu)

EPA's OSBBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

## EPA's Asbestos Small Business Ombudsman (ASBO)

[www.epa.gov/resources-small-businesses-asbestos-small-business-ombudsman](http://www.epa.gov/resources-small-businesses-asbestos-small-business-ombudsman) or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

## Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

## EPA's Compliance Assistance Homepage

[www.epa.gov/compliance](http://www.epa.gov/compliance)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

## Compliance Assistance Centers

[www.complianceassistance.net](http://www.complianceassistance.net)

EPA sponsored Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture](http://www.epa.gov/agriculture)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[www.ecar-greenlink.org](http://www.ecar-greenlink.org) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org)

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Surface Finishing

<http://www.sterc.org>

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pnca.org](http://www.pnca.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

## Transportation

[www.tercenter.org](http://www.tercenter.org)

## U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

## EPA Hotlines and Clearinghouses

[www.epa.gov/home/epa-hotlines](http://www.epa.gov/home/epa-hotlines)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

## Clean Air Technology Center (CATC) Info-line

[www.epa.gov/calc](http://www.epa.gov/calc) or 1-919-541-0800

## Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

## EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 1-734-214-4100

## National Pesticide Information Center

[www.npic.orst.edu](http://www.npic.orst.edu) or 1-800-858-7378

**National Response Center Hotline** to report oil and hazardous substance spills - <http://nrc.uscg.mil> or 1-800-424-8802

## Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/p2/pollution-prevention-resources-ppic](http://www.epa.gov/p2/pollution-prevention-resources-ppic) or 1-202-566-0799

## Safe Drinking Water Hotline -

[www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline](http://www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline) or 1-800-426-4791

## Toxic Substances Control Act (TSCA) Hotline

[tsc hotline@epa.gov](mailto:tsc hotline@epa.gov) or 1-202-554-1404

## Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

## Regional Small Business Liaisons

[www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons](http://www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons)

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

## State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

These locators provide state-specific contacts, regulations and sources covering the major environmental laws.

## State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states/list>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

## EPA's Tribal Portal

[www.epa.gov/tribalportal](http://www.epa.gov/tribalportal)

The Portal helps users locate tribal-related information within EPA and other federal agencies.

## EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www.epa.gov/enforcement/small-businesses-and-enforcement](http://www.epa.gov/enforcement/small-businesses-and-enforcement)

### EPA's Audit Policy

[www.epa.gov/compliance/epas-audit-policy](http://www.epa.gov/compliance/epas-audit-policy)

## Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

## Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*

CERTIFICATE OF MAILING

I certify that I sent a Finding of Violation, No. EPA-5-19-MOB-07, by Certified Mail, Return Receipt Requested, to:

Dan Hart, Owner/Operator  
H&H Diesel, Inc.  
7327 E. 600 North  
Rochester, Indiana 46975

I also certify that I sent a Finding of Violation, by e-mail to:

Jaime K. Saylor, Hatchett & Hauck, LLP  
[Jaime.Saylor@h2lawvers.com](mailto:Jaime.Saylor@h2lawvers.com)

Phil Perry, Chief  
Air Compliance Branch  
Office of Air Quality  
Indiana Department of Environmental Management  
[PPERRY@idem.IN.gov](mailto:PPERRY@idem.IN.gov)

On the 30<sup>th</sup> day of September 2019.



Kathy Jones  
Program Technician  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7019 0140 0000 0722 3925